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## TO SEARCH OR NOT TO SEARCH-- AUTOMOBILES AFTER BELTON AND ROSS

The search of automobiles, either incident to arrest or upon probable cause without a warrant, is an area in which many law enforcement officers continue to experience confusion. In keeping with our goal of providing practical knowledge for the officer on the street, these next two editions of Legal Log will review the cases of New York vs. Belton (453 U.S. 454, 1981) and U. S. vs. Ross (72 L. Ed. 2d 572, 1982).

This month's edition will discuss search of an automobile incident to arrest after Belton. Next month's edition will discuss probable cause searches of vehicles after Ross.

In Belton the U. S. Supreme Court handed down a clarified rule concerning the search of a vehicle incident to the arrest of any of its occupants. Prior to the Belton decision officers were left on their own to decide the extent to which prior non-vehicle "search incident to arrest" cases allowed search of a vehicle. In particular, in Chimel v. California (359 U.S. 752, 1969), the U. S. Supreme Court told officers that:

"When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting

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officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' - construing that phrase to



mean the area from within which he might gain possession of a weapon or destructible evidence." Chimel at 762-763 (emphasis added).

But the question of this same "search incident to arrest" where a vehicle was involved left much confusion.

The facts of Belton gave the Supreme Court the opportunity it had awaited to provide a clear rule in the area:

A New York state trooper stopped an automobile for speeding. Upon approaching the vehicle the officer smelled burnt marijuana and saw on the floor of the car an envelope marked "Supergold" - a term which the officer associated with marijuana. There were four men in the car, one of whom was Roger Belton. The officer placed the four men under arrest for unlawful possession of marijuana and ordered them out of the car. After patting each man down for weapons and separating them so that they were beyond each other's reach, the officer returned his attention to the car. He examined the envelope marked "Supergold" and determined that it contained marijuana. Following a more thorough search of the arrestees the officer searched the passenger compartment of the vehicle. On the back seat he found a leather jacket belonging to Belton and in a zippered pocket found cocaine.

Belton was subsequently indicted for criminal possession of a controlled substance. Following an unsuccessful attempt to have the cocaine suppressed, Belton pleaded guilty to a lesser charge while preserving his right to appeal the search and seizure questions. Although the Appellate Division of the New York Supreme Court upheld the constitutionality of the search, the New York Court of Appeals reversed on the general ground that the evidence, at the time of seizure, was not accessible to the arrestee or a confederate. It was in the posture that the case reached the U. S. Supreme Court.

The Supreme Court made relatively short work of upholding the search in Belton. The court cited the rule for automobile searches incident to arrest as follows:

"...when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." Belton at 460.

The court reasoned that the passenger compartment of an automobile is such a confined area that it is generally an area into which an arrestee might reach in order to grab a weapon or item of evidence.

This reasoning is thus consistent with the court's prior opinion in Chimel. To alleviate any confusion concerning precisely what in the passenger compartment may be searched the Belton court went on to address the issue of separate containers within the passenger compartment:

"It follows...that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach."

Container was defined in a footnote to the Court's opinion as including "glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like." Belton at 460, n. 4.

Furthermore, the Court attached no significance to the fact that the container is open or closed:

"Such a container may, of course, be searched whether it is open or closed, since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have." *Id.*

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The Court in Belton did not consider the possibility of a container being locked, and it will require further decisions before a conclusive answer to this can be determined. However, in justifying the closed container search in Belton, the Court relied heavily upon the language of the Chimel decision which justified a search into the area "within an arrestee's reach." If the possibility of an arrestee being capable of reaching the contents of the closed container is the underlying rationale in allowing police to search, then that possibility may diminish - or disappear altogether - if the container is closed and locked.

Although the Belton court was not presented with the question of the search of a trunk incident to arrest, it is safe to conclude that the trunk is not an area within the arrestee's "immediate control" and is thus not subject to a Belton search incident to arrest.

In summary, the law concerning search of a vehicle incident to the arrest of an occupant is as follows:

1. A search of a vehicle incident to arrest is justified by a lawful custodial arrest.
2. The object of the search is to secure weapons and evidence which might be destroyed and does not depend upon probable cause as to whether the weapons or evidence will be found.
3. Because of the object of the search (see 2 above), its scope is limited to the arrestee's person and that person's area of "immediate control".
4. The area of immediate control in a vehicle has been interpreted to mean the entire passenger compartment to include any containers therein, open or closed but not locked containers.
5. The search must be very closely tied in time to the actual arrest in order to be incident thereto.

Finally, it is abundantly clear, since Belton, that the search of the vehicle incident to arrest will be allowed even though the arrestee, in custody, has no access to the vehicle's passenger compartment (e.g. is handcuffed in the officer's vehicle).

(Next Month: Ross and Probable cause Searches of Vehicles)

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